

REMARKS

Claims 19-37 are currently pending. The Office Action asserts that the application contains groups of inventions which are not so linked as to form a single general inventive concept under PCT Rule 13.1. Specifically, Applicants have been requested to select between the following groups of inventions for continued prosecution on the merits:

Group I: claims 19-30, drawn to a preparation comprising *Bifidobacterium breve* and a mixture of at least two non-digestible soluble carbohydrate components A and B;

Group II: claims 31 and 37, drawn to a method of normalizing *Bifidobacterium* species composition in the gastro-intestinal tract of non- or partially breast-fed infants to that of the composition in breast-fed infants comprising manufacturing a composition comprised of the preparation of claim 19;

Group III: claim 35 drawn to a method of preventing and/or treating engorge malabsorption, comprising manufacturing a composition comprised of the preparation according to claim 19; and

Group IV: claims 32-34 and 36 drawn to a method for inhibiting the infiltration of eosinophils, neutrophils and mononuclear cells in allergic lesions, inhibiting a Th2 type immune response and/or stimulating the Th1-mediated immune response, comprising the manufacturing of a composition comprised of the preparation according to claim 19.

Additionally, the Office Action has restricted the claims between the following species:

A. Species of carbohydrates (identified as A and B in claim 19).

Applicants hereby elect Group I, claims 19-30, drawn to a preparation comprising *Bifidobacterium breve* and a mixture of at least two non-digestible soluble carbohydrate components A and B. Additionally, Applicants hereby elect, as its species, galacto-

oligosaccharides as carbohydrate A (claim 23) and fructo-polysaccharides as carbohydrate B (claim 25). Applicants acknowledge that the Office Action has identified claims 19 and 35-37 as claims that are generic to all species.

This election is made **with traverse**. Specifically, Applicants disagree that restriction is proper since the Groups all share a special technical feature.

PCT Rule 13.2 states that unity of invention "shall be fulfilled only when there is a technical relationship among those inventions involving one or more of the same or corresponding special technical features." The Office Action alleges that the above-defined Groups lack a special technical feature because United States Patent No. 5,895,648 to Cavaliere Vesely et al. suggests Applicants' composition. Presumably this statement is intended to imply that Cavaliere Vesely suggests the preparation defined in claim 19. Applicants, however, respectfully disagree that the preparation defined in claim 19 is suggested by Cavaliere Vesely.

Claim 19 is directed to a preparation comprising *Bifidobacterium breve* and a mixture of at least two non-digestible soluble carbohydrate components A and B, with carbohydrates A and B being further described in the claim as having a different structure from one another and having a different average number of monosaccharide units. Cavaliere Vesely does not teach or suggest this preparation. Instead, Cavaliere Vesely describes a composition that includes only a single type of non-digestible carbohydrate, namely fucto-polysaccharides. The use of different carbohydrates that have different chain lengths is not disclosed or suggested by Cavaliere Vesely. Accordingly, Applicants submit that the above-defined Groups share a special technical feature, and particularly the technical feature of a preparation comprising *Bifidobacterium breve* and a mixture of at least two non-digestible soluble carbohydrate components A and B, with carbohydrates A and B having a different structure from one another and having a different average number of monosaccharide units.

Additionally, Applicants contend that no serious burden exists on the Examiner by examining the claims of Groups I-IV in a single application. When searching and examining the Group I claims (*i.e.*, the preparation comprising *Bifidobacterium breve*), the Examiner will also encounter subject matter set forth in the claims of, *e.g.*, Group II (*i.e.*, a method of normalizing *Bifidobacterium* species composition comprising manufacturing a composition

Application No. 10/576,276
Paper Dated: December 16, 2010
In Reply to USPTO Correspondence of August 18, 2010
Attorney Docket No. 0470-061182

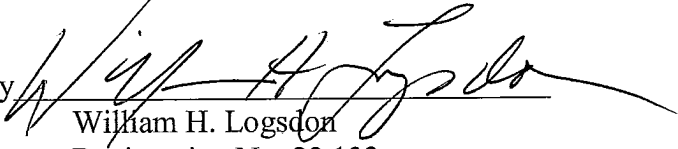
comprised of the *Bifidobacterium breve* preparation of claim 19). The same is true of the other Groups which all reference the preparation of claim 19. Therefore, a separate search would not be required. In view of the above comments, it is Applicants' position that no serious burden exists on the Examiner by examining the claims of Groups I-IV in a single invention. Accordingly, withdrawal of the restriction requirement between Groups I-IV is respectfully requested.

CONCLUSION

In view of the above comments, Applicants respectfully request that the restriction requirement be withdrawn and claims 19-37 be examined on the merits.

Respectfully submitted,
THE WEBB LAW FIRM

By


William H. Logsdon
Registration No. 22,132
Attorney for Applicants
436 Seventh Avenue
700 Koppers Building
Pittsburgh, PA 15219
Telephone: (412) 471-8815
Facsimile: (412) 471-4094
E-mail: webblaw@webblaw.com